

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HARRY BODINE,

No. C 11-2122 WHA (PR)

Petitioner,

**ORDER OF DISMISSAL**

v.

RANDY GROUNDS,

Respondent.

**INTRODUCTION**

Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. The petition challenges the denial of parole by the California Board of Parole Hearings (“Board”).

**ANALYSIS**

**A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of

1 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not  
2 sufficient, for the petition is expected to state facts that point to a ‘real possibility of  
3 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
4 688, 689 (1st Cir. 1970)).

5 **B. LEGAL CLAIMS**

6 Petitioner claims that the Board violated his protected liberty interest in parole because  
7 the evidence warranted a finding that he would not pose a danger to the public if released and  
8 that he would be suitable for parole. For purposes of federal habeas review, a California  
9 prisoner is entitled to only “minimal” procedural protections in connection with a parole  
10 suitability determination. *Swarthout v Cooke*, 131 S.Ct. 859, 863 (2011). The procedural  
11 protections to which the prisoner is entitled under the Due Process Clause of the Fourteenth  
12 Amendment to the U.S. Constitution are limited to an opportunity to be heard and a statement  
13 of the reasons why parole was denied. *Id.* at 862. Petitioner does not dispute that he received  
14 an opportunity to be heard and a statement of the reasons parole was denied. The constitution  
15 does not require more. *Ibid.* The court in *Swarthout* explained that no Supreme Court case  
16 “supports converting California’s ‘some evidence’ rule into a substantive federal requirement.”  
17 *Ibid.* It is simply irrelevant in federal habeas review “whether California’s ‘some evidence’ rule  
18 of judicial review (a procedure beyond what the Constitution demands) was correctly applied.”  
19 *Id.* at 863. In light of the Supreme Court’s determination that due process does not require that  
20 there be any amount of evidence to support the parole denial, petitioner’s claim fails to state a  
21 cognizable basis for federal habeas relief.

22 **CONCLUSION**

23 In light of the foregoing, the petition for a writ of habeas corpus is **DISMISSED**.

24 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to  
25 rule on whether a petitioner is entitled to a certificate of appealability in the same order in which  
26 the petition is dismissed. Petitioner has failed to make a substantial showing that a reasonable

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jurist would find this court's denial of his claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this case.

The clerk shall enter judgment and close the file.

**IT IS SO ORDERED.**

Dated: May 27, 2011.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE